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10 Attorneys for Defendant United States Coast Guard

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 NORTH COAST RAILROAD  
AUTHORITY, a public agency,

15 Plaintiff,

16 v.

17 UNITED STATES COAST GUARD,

18 Defendant.  
19

No. C 05-2739 NJV

STIPULATION AND ~~[PROPOSED]~~  
ORDER OF COMPROMISE  
SETTLEMENT

20 IT IS HEREBY STIPULATED by and between the parties, after full and open  
21 discussion, that the above-captioned action brought pursuant to the Freedom of Information Act  
22 (“FOIA”) be settled and compromised on the following terms:

23 1. Defendant United States Coast Guard (the “Coast Guard”) shall produce to  
24 Plaintiff North Coast Railroad Authority’s (“Plaintiff”) counsel, Christopher J. Neary, the Coast  
25 Guard’s Report of Investigation files concerning the allisions with the Black Point Railroad  
26 Bridge on June 11, 2002, April 20, 2003, November 28, 2003, July 3, 2004, and October 26,  
27 2004 after redacting the names, addresses, telephone numbers and other identifying information  
28 protected by the privacy rights of third parties under FOIA, the Privacy Act, and/or the

1 Constitution. No responsive records were found for allisions occurring during June 2004 or on  
2 December 1, 2004. The parties agree that the production of these documents is in exchange for  
3 Plaintiff releasing and dismissing all claims alleged in the Complaint it filed in the above-  
4 captioned case on July 5, 2005, and all claims for attorneys' fees, costs, and any other form of  
5 legal or equitable recovery relating to or arising out of the FOIA requests to the Coast Guard  
6 dated April 28, 2003, April 29, 2003, April 30, 2003, May 6, 2003, January 27, 2005, and  
7 March 1, 2005. The parties each agree to bear their own costs and attorney's fees arising out of  
8 all stages of litigation, including but not limited to the processing of the Plaintiff's  
9 administrative requests, and district court Complaint in connection with the above-captioned  
10 action.

11 2. Plaintiff will accept the terms described in paragraph 1 in full settlement and  
12 satisfaction of any and all claims and demands which it, its attorneys, successors, or assignees  
13 may now have or hereafter acquire against Defendants the Coast Guard, United States of  
14 America, and/or any of their past and present officials, agents, employees, attorneys, or insurers  
15 that relate to or arise out of the FOIA requests to the Coast Guard dated April 28, 2003, April  
16 29, 2003, April 30, 2003, May 6, 2003, January 27, 2005, and March 1, 2005.

17 3. In consideration of this Agreement and production of the documents referenced  
18 in paragraph 1, Plaintiff agrees that upon its counsel's receipt of such documents, it's counsel  
19 will execute and e-file a Stipulation of Dismissal and [Proposed] Order requesting that the  
20 entire above-captioned action be dismissed with prejudice consistent with the terms of this  
21 Agreement.

22 4. Plaintiff agrees that it has not filed and will not file any other charges,  
23 complaints, lawsuits, or other claims that relate to or arise out of the FOIA requests to the Coast  
24 Guard dated April 28, 2003, April 29, 2003, April 30, 2003, May 6, 2003, January 27, 2005,  
25 and March 1, 2005. Plaintiff agrees to cooperate with the Coast Guard in connection with  
26 taking whatever steps are necessary to obtain the dismissal with prejudice of any such charges,  
27 complaints, lawsuits, or other claims.

28 5. Plaintiff hereby releases and forever discharges the Coast Guard, the United

1 States, and any and all of their past and present officials, agents, employees, attorneys, insurers,  
2 their successors and assigns, from any and all obligations, damages, liabilities, actions, causes  
3 of actions, claims and demands of any kind and nature whatsoever, whether suspected or  
4 unsuspected, at law or in equity, or known or unknown, which arise from or relate to the FOIA  
5 requests to the Coast Guard dated April 28, 2003, April 29, 2003, April 30, 2003, May 6, 2003,  
6 January 27, 2005, and March 1, 2005.

7 6. The provisions of California Civil Code Section 1542 are set forth below:

8 "A general release does not extend to claims which the creditor  
9 does not know or suspect to exist in his favor at the time of  
10 executing the release, which if known by him must have  
11 materially affected his settlement with the debtor."

12 Plaintiff has been informed of the statutory language of Civil Code Section 1542, and fully  
13 understanding the same, nevertheless elects to waive the benefits of any and all rights it may  
14 have pursuant to the provision of that statute and any similar provision of federal law to the  
15 extent it concerns claims that arise from or relate to the FOIA requests to the Coast Guard dated  
16 April 28, 2003, April 29, 2003, April 30, 2003, May 6, 2003, January 27, 2005, and March 1,  
17 2005 only. Plaintiff understands that, if the facts concerning such claims and the liability of the  
18 government for such claims are found hereinafter to be other than or different from the facts  
19 now believed by it to be true, this Agreement shall be and remain effective notwithstanding  
20 such material difference.

21 7. This Agreement may be pled as a full and complete defense to any subsequent  
22 action or other proceeding involving any person or party that arises out of the claims released  
23 and discharged herein.

24 8. This Agreement is a compromise settlement of disputed claims and demands,  
25 which settlement does not constitute an admission of liability or fault on the part of the Coast  
26 Guard, the United States, or any of their past and present officials, agents, employees, attorneys,  
27 or insurers on account of the events described in Plaintiff's Complaint in the above-captioned  
28 action.

1           9.       Plaintiff acknowledges and agrees that it has thoroughly reviewed the entire  
2 Agreement, has discussed its terms with its attorney, and understands its provisions.

3           10.       The parties agree that should any dispute arise with respect to the  
4 implementation of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement  
5 and pursue its original cause(s) of action. Plaintiff's sole remedy in such a dispute is an action  
6 to enforce the Agreement in district court. The parties agree that the district court will retain  
7 jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this  
8 Agreement.

9           11.       Each party hereby stipulates that it is fully aware of and understands all of the  
10 terms of the Agreement and the legal consequences thereof. It is acknowledged that the parties  
11 hereto have mutually participated in the preparation of this Agreement, and it is agreed that no  
12 provision hereof shall be construed against any party hereto by virtue of the activities of that  
13 party or her/its attorney.

14           12.       If any provision of this Agreement shall be invalid, illegal, or unenforceable, the  
15 validity, legality, and enforceability of the remaining provision shall not in any way be affected  
16 or impaired thereby.

17           13.       This instrument shall constitute the entire Agreement between the parties, and it  
18 is expressly understood and agreed that the Agreement has been freely and voluntarily entered  
19 into by the parties hereto. The parties further acknowledge that no warranties or representations  
20 have been made on any subject other than as set forth in this Agreement. This Agreement may  
21 not be altered, modified or otherwise changed in any respect except by writing, duly executed  
22 by all of the parties or their authorized representatives.

23           14.       Any requests that Plaintiff makes under the Freedom of Information Act for the  
24 Coast Guard's Report of Investigation files concerning a particular allision with the Black Point  
25 Railroad Bridge should be sent to the United States Coast Guard, Attn: FOIA Office, Room  
26 6106, 2100 Second Street SW, Washington, D.C. 20593, after Plaintiff has made a reasonably  
27 diligent effort to confirm that the Coast Guard in fact conducted an investigation into the  
28 particular allision. The Coast Guard reserves the right to object to any such requests from

1 Plaintiff on the grounds that there is an open investigation, the requested documents are  
2 protected by the privacy rights of third parties, and/or otherwise exempt from production under  
3 the Freedom of Information Act or other applicable law.

4  
5 Dated: November 29, 2005

KEVIN V. RYAN  
United States Attorney

6  
7 /s/

JULIE A. ARBUCKLE  
Assistant United States Attorney  
Attorneys for Defendant United States of America

8  
9 Dated: November 28, 2005

NORTH COAST RAILROAD AUTHORITY

10  
11 /s/

By: Mitch Stogner  
Its: Executive Director  
Plaintiff

12  
13 Approved:

14 Dated: November 22, 2005

15 /s/

CHRISTOPHER J. NEARY  
Attorney for Plaintiff North Coast Railroad Authority

16  
17 **ORDER**

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19  
20 DATED: 12/5/05

  
NANDOR J. VADAS  
United States Magistrate Judge